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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Sri Lanka from 9 to 18 November 2015. The Working Group thanks the Government of Sri Lanka for its invitation and its cooperation before and during the visit. It considers the invitation and the Government's increasing openness to international engagement as very positive and encouraging steps. Today, the Government of Sri Lanka has the challenge to transform its promises into a concrete, comprehensive, legitimate and participatory framework to secure the rights to truth, justice, reparation and memory and guarantees of non-repetition in respect of the victims of enforced disappearances, families and Sri Lankan society as a whole, in the context of a reconciliation process.

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka*

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* Circulated in the language of submission only

I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances, represented by Tae-Ung Baik, Bernard Duhaime and Ariel Dulitzky, visited Sri Lanka from 9 to 18 November 2015, at the invitation of the Government.

2. The Working Group thanks the Government of Sri Lanka for its invitation and for the efforts made before and during the visit, in particular by the Ministry of Foreign Affairs, to facilitate the smooth conduct of the visit. It appreciated that virtually all of the meetings that it requested were accommodated. It also appreciated the openness and cooperative disposition of the officials.

3. The Working Group also thanks the Office of the Resident Coordinator and the United Nations country team in Sri Lanka, as well as the Office of the United Nations High Commissioner for Human Rights, for their support.

4. During its 10-day mission, the Working Group visited all parts of the island, including Colombo, Batticaloa, Galle, Jaffna, Kilinochchi, Mannar, Matale, Mullaitivu and Trincomalee. The Working Group met with the President, the Prime Minister, the Minister of Foreign Affairs and the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. It also met with the Commander of the Navy; the Commander of the Army; the Chief Justice; the Attorney-General; the Inspector General of Police; the Director of the Terrorism Investigation Division; the Director of the State Intelligence Service; the Deputy Director of the Criminal Investigation Department; the Governor of the Northern Province; the Governor of the Eastern Province; the Chairman of the Rehabilitation of Persons, Properties and Industries Authority; officials from the Office of National Unity and Reconciliation; the Government Analyst's Department; the Presidential Commission on Missing Persons; a group of parliamentarians, including the Speaker of Parliament; and members of the Human Rights Commission. The Working Group visited mass graves in Matale and Mannar, and the memorial for the disappeared in Seeduwa. It also visited the Boosa Detention Centre, the navy base in Trincomalee — including a former secret detention facility on the base — and the temporary detention facilities on the 4th and 6th floors of the building housing the Criminal Investigation Department and the Terrorism Investigation Division.

5. The Working Group met with a large number of family members and relatives of disappeared persons in all parts of the country as well as with families of missing and abducted soldiers. It held meetings with representatives of communities and civil society, including non-governmental organizations (NGOs), human rights defenders and lawyers. The Working Group especially thanks all the relatives of disappeared persons who courageously shared their testimonies, many of them for the first time.

6. Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter-terrorist activities or in the internal armed conflict. Given the context in which they occurred, many enforced disappearances could be considered as war crimes or crimes against humanity if addressed in a court of law. During and after the conflict, enforced disappearances were still carried out for purely economic purposes such as extortion by some State officials and affiliated paramilitaries. The extensive use of enforced disappearance and the almost complete lack of judicial accountability and of decisive and sustained efforts to secure the truth about the disappeared, in addition to the absence of a comprehensive reparation programme and

social, psychological and economic support for the victims[1] have left profound wounds on society and a deep sense of mistrust among relatives. This mistrust has been exacerbated by the continued and extensive presence of the military in the north and east of the country.

7. Over the years, the Working Group has transmitted communications concerning over 12,000 cases of enforced disappearance to the Government of Sri Lanka, of which 5,750 are still outstanding. A large number of cases before the Working Group concern disappearances that occurred in the late 1980s and early 1990s in relation to the violent targeting of Sinhalese youth suspected of having links to the Janatha Vimukti Peramuna or People's Liberation Front.

8. A considerable number of cases also relates to the disappearance of Tamils throughout the lengthy armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE), which ended in May 2009. In addition to these waves of widespread and systematic enforced disappearances, there were also other types of enforced disappearances, such as the so-called "white van" disappearances, disappearances in the context of antiterrorism operations, disappearances conducted for ransom or economic extortion or a combination of all three. At the world level, the second largest number of enforced disappearance cases before the Working Group involves Sri Lanka. That represents the tip of the iceberg of enforced disappearances in Sri Lanka, as demonstrated by the abundant documentation collected by different public inquiries and commissions established over the years.

9. A large number of abductions have also been carried out by LTTE. These are serious acts that are tantamount to enforced disappearances and should be properly investigated and sanctioned in accordance with international standards. The rights of the victims and relatives of persons disappeared at the hands of LTTE should be protected and restored equally.

10. This was the Working Group's fourth visit to Sri Lanka. It had visited the country in 1991, 1992 and 1999. During the latest visit, it observed the great potential for the full and effective implementation of the provisions of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance[2] to prevent and eradicate enforced disappearances in the country.

11. The Working Group welcomes the fact that, in the last few years, the Government of Sri Lanka has taken its engagement with the Working Group seriously. A specific interministerial task force has been created to examine and follow up on the cases before the Working Group, which has been receiving a large number of State replies concerning the outstanding cases. The Working Group noted that, recently, the responses have been more precise and substantive in comparison to previous ones, which tended to be standard, fairly repetitive and, in the great majority of cases, manifestly insufficient to clarify the cases. The Working Group hopes that this trend will continue and lead to the clarification of a large number of cases in the future.

II. Legislation

12. Sri Lanka is a party to most of the core United Nations human rights instruments. The Working Group welcomes in particular its ratification on 25 May 2016 of the

[1] In cases of enforced disappearance, the victim is not only the disappeared person but also any individual, in particular the next of kin of the disappeared, who suffers as a result of the disappearance.

[2] See General Assembly resolution 47/133.

International Convention for the Protection of All Persons from Enforced Disappearance. This ratification should be followed immediately by implementing legislation.

13. The Working Group encourages the Government of Sri Lanka to ratify other international instruments, such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that may have an impact on enforced disappearances and their consequences in Sri Lanka. Given the context in which enforced disappearances took place, Sri Lanka should also ratify the Protocols additional to the Geneva Conventions of 12 August 1949 and the Rome Statute of the International Criminal Court.

14. Sri Lanka lacks separate, comprehensive and integral enforced disappearance legislation to implement all the obligations emanating from the Declaration as well as other international norms, including the different aspects of prevention, investigation, penalties and reparation for the victims of enforced disappearances. This reflects the absence of a clear and effective public policy to deal with all aspects relating to enforced disappearances.

15. The Sri Lanka Penal Code does not include the autonomous crime of enforced disappearance nor does it recognize enforced disappearance as a crime against humanity. Chapter XVI of the Penal Code on offences affecting the human body recognizes crimes such as abduction, kidnapping and slavery. Sections 355 to 360 of the Penal Code set out the different types of abductions according to the intention of the perpetrators. In the few cases that have been brought to justice, the perpetrators of enforced disappearances have been charged under other crimes in the Penal Code, including kidnapping, abduction, wrongful confinement or a combination of these offences. However, either such offences do not have the necessary scope to encompass enforced disappearances or the severity of the penalty is not appropriate to the gravity of the crime. The Working Group further highlights that Sri Lanka lacks legislation that enables prosecutions of perpetrators of past atrocities, such as war crimes and crimes against humanity.

16. The Working Group received extensive information about the Prevention of Terrorism Act and on how a number of its provisions could facilitate the occurrence of enforced disappearance. In particular, the Act allows arrest without a warrant and permits detention for an initial period of 72 hours without the person having to be produced before a court (sect. 7) and thereafter for up to 18 months on the basis of a detention order issued by the Minister of Defence (sect. 9). In practice, however, these provisions often serve as grounds to detain suspects for many years without judicial review. The lawfulness of a detention order issued by the Minister of Defence cannot be challenged in a court of law. The Act also removes the power of a judge to order bail or to impose a suspended sentence (sect. 7 (1)) and places on the accused the burden of proving that a confession was obtained under duress. Furthermore, despite the fact that section 13 (2) states that any person in respect of whom a detention order has been made shall be informed of the unlawful activity in connection with which the order was made, lawyers often experience difficulties obtaining a copy of the detention order. According to article 10 (2) of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance:

> accurate information on the detention of [disappeared] persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

As such, strict and effective regulation and limitation of the use of administrative detention or deprivation of liberty without immediate and proper judicial oversight is an essential preventive measure to avoid enforced disappearances. In addition, the access to lawyers

under the Prevention of Terrorism Act is limited and subject to the approval of the Chief of the Terrorism Investigation Division, which is in clear violation of the rights of the accused. In fact, the few persons who are still detained in Boosa under section 9 (1) of the Act have reportedly not been allowed to meet their lawyers in the detention centre for many years. According to information received after its visit, since March 2014, the largest number of arrests made under the Act in the Northern and Eastern Provinces seems to have been recorded in April 2016. There was also at least one incident of a person being abducted in a white van in Jaffna and subsequently found to be detained by the Terrorism Investigation Division under the Act.

17. Secret detention is totally unacceptable under article 10 (1) of the Declaration. The Working Group visited the navy base in Trincomalee and the two underground complexes containing 11 cells that were used in the past as secret detention facilities. The Working Group also met with Criminal Investigation Department officers who are investigating the case of 11 individuals who had been abducted in Colombo in 2008 and brought to Trincomalee. The Working Group thanks the Navy Commander and the Director of the Criminal Investigation Department for facilitating access to the navy base and the cells. The Working Group looks forward to receiving an update on the results of the investigation of this case and recommends that thorough and independent investigations into all alleged instances of secret detention be undertaken.

18. In February 2015, Parliament passed the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. While this is an important achievement, the Working Group received information about some shortcomings. The Act does not explicitly offer protection to witnesses who are charged with or convicted of crimes, officers of the court, members of the Bar or members of the judiciary. In addition to providing for the establishment of a National Authority for the Protection of Victims of Crime and Witnesses (sect. 11 (1)), the Act tasks the Inspector General of Police with establishing and maintaining the Victims of Crime and Witnesses Assistance and Protection Division (sect. 19 (1)) and provides that a Senior Superintendent of Police shall be placed in charge of the Division. This is of particular concern because, during its visit, the Working Group heard many allegations that threats against families and witnesses often came from the police and that witnesses were afraid of the police. The Act does not clearly specify the procedure and criteria for admitting or refusing a person in the protection programme, nor how to conduct the threat assessment. In addition, the Act does not provide any mechanism to appeal or review decisions to terminate protection.

III. Truth

19. Owing to the lack of a comprehensive, transparent and effective mechanism to find missing and disappeared persons, many families continue to experience great emotional distress. While many families have attempted to come forward and seek remedies from the authorities or from the different ad hoc mechanisms set up by the Government, most of them have been unable to obtain accurate information regarding their disappeared relatives. In many cases, these families and activists have been subject to harassment and intimidation as a result of their truth-seeking activities.

20. The families of the disappeared in Sri Lanka have waited too long to know the truth about the fate or whereabouts of their loved ones. This is an absolute right under the Declaration and an obligation that the State should meet in accordance with international law.

Former truth-seeking initiatives

21. A number of initiatives had been set up in the past with the objective of addressing the phenomenon of enforced disappearances in Sri Lanka, including at least 11 presidential commissions of inquiry specifically mandated to inquire into large-scale disappearances; 2 presidential commissions of inquiry mandated to inquire into other matters, including disappearances; and 2 departmental units created to address disappearances.

22. The Working Group will refer to the two most recent initiatives. In 2010, President Mahinda Rajapaksa established the Lessons Learnt and Reconciliation Commission to investigate the breakdown of the 2002 ceasefire agreement and identify lessons learned to promote national unity and reconciliation. The Commission was not exclusively devoted to the issue of disappearances, however, it made several constructive recommendations on the issue. It highlighted the failure of the Government to implement the recommendations on enforced disappearances made by previous commissions and the resulting lack of trust and scepticism on the part of the population regarding the value of these mechanisms.

23. Among the issues highlighted in the Commission's 2011 report was the large number of allegations of disappearances that it had received and the evident lack of action by the authorities when formal complaints were made. The Commission referred to the State responsibility to properly investigate these disappearances and to bring perpetrators to justice and made specific reference to the prosecution of military personnel involved in the disappearance of persons who had surrendered to the armed forces. It also highlighted the need to criminalize enforced disappearances as an individual crime and to develop a centralized data-collection system on missing persons. Most importantly, the Commission referred to the relatives of missing persons and affirmed their right to truth and to legal remedies. It recommended that the Government assist families in dealing with the trauma of not knowing the whereabouts of their family members. The Commission also recommended the appointment of a special commissioner of investigation to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings.[3]

24. On 15 August 2013, President Rajapaksa appointed a new presidential commission to investigate complaints regarding missing persons. Composed of three people, the new commission is also known as the Paranagama Commission, after the name of its Chair.

25. The original mandate of the Paranagama Commission was to investigate whether anyone who was resident in the Northern and Eastern Provinces during the period from 10 June 1990 to 19 May 2009 had been abducted or had disappeared from their place of residence. Its mandate was eventually expanded to cover the entire period of the armed conflict from 1983 to 2009 and to investigate violations of international law during the last stages of the conflict.

26. The Government had depicted the Paranagama Commission not only as the primary instrument to address grievances of the families of the disappeared but also, given the expansion of its mandate, as the sole mechanism for addressing wartime violations of international human rights and humanitarian law. However, the Commission has been the subject of criticism owing to several shortcomings. For example, it has been criticized as being structurally flawed as it depends on the Executive for the appointment of its members, financing and follow-up actions. The expansion of its mandate in 2014 to include investigations into broader violations related to the conflict and which has focused in particular on the abuses of LTTE also raised strong concerns among civil society that this detracted from the Commission's ability to deliver on its primary responsibility to assist the

[3] See A/HRC/30/CRP.2, para. 511.

families of the disappeared. The extension of the mandate created distrust, particularly among families in the north and east, as it was announced after thousands of testimonies had already been heard without any specific result or findings being shared.

27. There was also a lack of public confidence that the Commission effectively promoted truth, justice and redress, as few investigations were under way as a result of its endeavours. Of the over 20,000 complaints about missing persons received by the Paranagama Commission, only 150 have been referred for further investigation.[4]

28. Finally, the Paranagama Commission has been largely criticized by civil society and family organizations for not demonstrating empathy with the relatives of the disappeared. There were repeated complaints as to the quantity and quality of the interpretation provided during hearings, with not enough interpreters for the volume of complaints received and their lack of adequate contextual knowledge of the affected areas and key issues related to incidents. The Commissioners were also perceived as being insensitive towards women, who comprised the largest number of complainants and who experience targeted and differentiated consequences from the disappearance of their loved ones.

29. The Paranagama Commission submitted two reports to the President in 2015: an interim report explaining the work carried out with regard to its first mandate on missing persons, and a final report in September 2015, which, as reported to the Working Group by relatives of several disappeared persons and civil society organizations, did not satisfy the expectations of the victims. It focused exclusively on the Commission's second and broader mandate relating to human rights violations during the conflict and only indirectly addressed the issue of missing persons and enforced disappearances. Furthermore, some of the people interviewed during the Working Group's visit argued that references in the report to persons who were missing and allegedly found or reportedly seen overseas confirm the biases of the Commission.

30. There is uncertainty about the current status of the Commission based on declarations by high-ranking government officials that its activities would be suspended. However, up to late 2015, the investigation team continued to work and had contacted relatives of disappeared persons. The extension of the Commission's mandate and activities beyond the publication of its reports has created confusion, in particular given the Government's proposal to create an office of missing persons.

31. All of the above-mentioned mechanisms have been characterized by problems, ineffectiveness and biases. None of the commissions covered the period between 1987 and 1990 during which large numbers of enforced disappearances linked to the Janatha Vimukti Peramuna uprising were allegedly perpetrated. The so-called white van disappearances, which were not strictly related to the armed conflict, have also not been addressed by any of the more recent mechanisms. Most of the mechanisms have also been criticized for their lack of independence and transparency and their recommendations, when made publicly available, were never followed up in a systematic manner. While some of the commissions were able to identify alleged perpetrators, they were rarely followed up by criminal investigations and convictions. Most importantly, these mechanisms did not achieve the ultimate goal of providing victims with meaningful responses to clarify the fate or whereabouts of the disappeared.

32. Despite their many shortcomings, these mechanisms collected an important array of information. However, most of the information has not been formally assessed, and most of the reports have not been published in their entirety; significant portions of information and

[4] Information provided by the Commissioners during the interview with the Working Group in November 2015.

supporting material have been withheld. Therefore, a priority for any new State institution charged with searching for disappeared persons should be to refer to this information as a starting point, not only to search for truth, but also to launch and/or continue relevant investigations and prosecutions. Furthermore, all existing reports should be made public and easily accessible.

33. In compiling information, there is need to avoid the revictimization of the families of the missing and disappeared by not requesting them to repeat testimony already provided to previous commissions.

Office of Missing Persons

34. The Working Group welcomes the proposal to create the Office of Missing Persons charged with searching for disappeared persons. Following its visit, the Working Group was informed that on 24 May 2016 the Cabinet had approved the establishment by parliamentary act of the Office as an independent institution. The Working Group also received information from the Government that the International Committee of the Red Cross was providing technical expertise in this area.

35. The Working Group supports the idea of a State institution dedicated to the humanitarian task of searching for the thousands of people who disappeared in the country and emphasizes the need for a State policy representing society as a whole to address the widespread conviction of hundreds of families that a proper truth-seeking process will result in the return of their loved ones. If the outcome of a serious, legitimate and sincere truth-seeking process is different from what is expected by the families, the Government and society will need to provide those families with all necessary support.

36. The Working Group also welcomes the proposal by the Government to establish a commission on truth, justice, reconciliation and non-recurrence. It considers that such a commission could play an important role if it overcomes all the shortcomings of the previous truth-seeking initiatives.

Mass graves

37. The Working Group visited mass graves in Mannar and Matale. It noted clear problems in the way that the sites had been secured and the samples and evidence handled.

Mannar mass grave

38. At the end of 2013, the skeletal remains of 83 women and children were discovered in Mannar, in the Northern Province. The skeletons are being kept at the University of Peradeniya. In this respect, concerns have been expressed about the reasons why the skeletons were removed from the grave and the weak measures taken to protect them. Furthermore, it is not clear whether all of the bodies buried in the area have been accounted for. The court gave instructions for statements from relatives who believe that their family members were buried at the site to be recorded. As a result, some family members of disappeared persons have provided affidavits to the court. However, concerns have been expressed about the slow pace at which the police is investigating the case.

Matale mass grave

39. The Matale mass grave was uncovered on 26 November 2012, after about 154 skeletal remains were found near the site of the Matale District Hospital in the Central Province. A judicial inquiry was launched the same day at the Matale Magistrate Court.

There have been conflicting reports about the remains found in the grave, including about the period when the inhumations would have been carried out. In a report requested by the judicial medical officer in December 2012, it was indicated that the skeletons were buried in piles and that some of them exhibited clear signs of torture and extrajudicial execution. The report concluded that the inhumations had been carried out between 1986 and 1990.

40. A presidential commission was established in June 2013 to probe into the Matale mass grave. Around the same time, the sitting magistrate on the case was suddenly transferred to Colombo for reportedly unclear reasons. In another report, dated 2014, it was indicated that, based on a radiocarbon dating of only four samples, the inhumations predate 1950. Various sources have expressed concern with regard to the chain of custody of the samples and the process by which only some were sent for testing. Many complained as to the possible political interference that would affect the continuity of the investigation and the judicial inquiry. On 24 July 2015, the case was suspended pending recommendations by the Attorney General or a senior police officer; the case remained suspended as at the time of writing of the present report.

41. There are a number of other mass graves in Sri Lanka that the Working Group was unable to visit and which are most likely related to cases of enforced disappearance.

42. The Government should be proactive in ensuring the proper investigation of known mass graves and in the identification of new ones. Unfortunately, the Government is not taking any active measures to uncover possible grave sites until it is compelled to investigate by a court order. At the same time, given that a comprehensive State policy to search for disappeared persons would likely give rise to the discovery of more graves, the Government should reinforce the forensic capacity and technical expertise of all those involved in the exhumation and identification of the remains and in the ensuing criminal investigation.

43. The Working Group welcomes the establishment of a new DNA laboratory in the Government Analyst's Department, but is concerned that it may not have the capacity to deal with the increasing workload.

44. The Working Group underlines the importance of rendering public and fully accessible all archives, including military archives, that may contain information on the fate and whereabouts of disappeared persons. In particular, the Working Group heard consistent and reliable accounts about people who had disappeared after surrendering to the army during the last days of the conflict with LTTE in May 2009. It also heard several tragic stories of parents being taken away and disappeared together with their children during that phase of the conflict. In its report on its investigation on Sri Lanka, the Office of the United Nations High Commissioner for Human Rights stated that "there are reasonable grounds to believe that a number of military cadres, who had laid down arms and were thus hors de combat, were unlawfully killed after having surrendered unarmed to the security forces" and that "a number of LTTE cadres, such as those belonging to the political wing, and other individuals not or no longer taking direct part in hostilities, including children, were also extrajudicially executed".[5] The Government has the responsibility and the obligation to do its utmost to investigate these allegations, establish the truth and bring all those responsible to justice.

[5] See A/HRC/30/CRP.2, para. 285.

IV. Justice

45. Impunity for enforced disappearances remains a major challenge in Sri Lanka. Progress in establishing accountability for violations committed in the past has been slow. Victims seek more accountability as many believe that the majority of the perpetrators have escaped justice so far. The Declaration on the Protection of All Persons from Enforced Disappearance requires that the State guarantee to the victims of enforced disappearance an effective remedy that includes a thorough and impartial ex officio investigation with a view to identifying those allegedly responsible for the disappearance and imposing the appropriate penalties. The Working Group has reiterated on many occasions that impunity for enforced disappearances is a source of future violations. No one suspected of committing or being complicit in enforced disappearances, irrespective of rank or official position, can be immune from criminal investigation, trial and punishment. The Declaration also stipulates that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. As such, allegations that enforced disappearances occurred in the context of fighting terrorism or were the necessary consequence of war or that the perpetrators were following orders from superiors cannot be used as exculpatory reasons or defence. Nevertheless, the Declaration provides that mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance (art. 4).

46. The Working Group received information on a few cases relating to enforced disappearances into which investigation and prosecution proceedings had been initiated. For the vast majority of cases, there is absolute impunity. The State should take decisive action in this regard. Overcoming the pattern of structural impunity will require strong leadership, political will and concerted efforts.

47. The Working Group received extensive and consistent information indicating that fear discouraged relatives from filing complaints in relation to enforced disappearances. The Working Group also received innumerable testimonies from families expressing their strong mistrust in the administration of justice in Sri Lanka, including the courts, the investigative bodies and the Attorney General's Department. Several sources expressed serious concern about the lack of independence of the Attorney General's Department and its approach to prosecution for disappearances that occurred in the past. Finally, sources reported that there were significant impartiality and conflict of interest issues in the light of the fact that the Attorney General's Department both prosecutes State actors suspected of disappearance-related crimes and defends the same State actors in legal proceedings such as in relation to habeas corpus writs.

48. According to several sources, the authorities — in particular the prosecution services — try to discredit disappeared persons by claiming that they have been involved with LTTE, without properly substantiating these allegations. In several cases, the relatives of the victims of enforced disappearance have been subjected to intimidation, threats and reprisals because they insisted that a proper investigation be carried out. The Working Group observed severe problems relating to investigations into enforced disappearances, including omissions, delays and lack of due diligence. Many authorities, both civil and military, allegedly refuse to work or cooperate with the investigating authorities.

49. The investigation of the secret detention centre at Trincomalee navy base highlighted some of the problems and demonstrated the limited possibilities of achieving full and complete justice in Sri Lanka, if international judges, prosecutors and investigators are not integrated. According to information received by the Working Group during its visit

to the base, the disappearance of only 11 individuals is being investigated. However, it is very clear that many more people were detained at the centre. It appears that the secret detention centre had been used for many years to detain and torture many more than these 11 individuals. Although the criminal investigation was launched in 2009, the investigation team was only allowed to enter the navy base in 2015. This six-year delay is indicative of the lack of adequate political will and cooperation on the part of the highest authorities and the navy to conduct proper investigations. It is also possible that detainees may have been protected from disappearance or torture if access had been provided earlier as, apparently, the detention centre was functioning up to at least July 2010. So far, not all of the names of the navy and intelligence officers who were involved in the operation of the secret detention centre have been disclosed to the investigation team. The current condition of cells and the area around the detention centre raises serious concerns about the possibility of conducting additional forensic studies. It is unclear whether all the documentation that could shed light on the situation and on possible perpetrators has been requested or produced, such as communication logs, correspondence, file photographs of detainees, logs of guard teams at the entrance of the base, transport logs and records of food and other equipment brought into the centre. It was clear to the Working Group that the area around the detention sites had not been thoroughly investigated, all possible evidence had not been fully and professionally collected and other similar facilities in the area had not been completely searched. After its visit, the Working Group was informed that a Chief Magistrate had ordered the Criminal Investigation Department to launch an inquiry on some bones that had been found in the underground prison during the Working Group's visit.

50. In order to overcome these problems, there has been much discussion about creating a proper judicial mechanism for dealing with serious human rights violations, crimes against humanity and war crimes, including enforced disappearances. The Working Group supports the recommendation put forward by the United Nations High Commissioner for Human Rights that Sri Lanka should draw on the lessons learned and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators.[6] The proposed judicial mechanism should build the confidence of all Sri Lankans, in particular the victims, in relation to the independence and impartiality of the process and its full respect for international human rights law, international humanitarian law and international criminal law.

51. In considering the integration of international elements into the judicial accountability mechanism, Sri Lanka should guarantee that all investigations are properly and professionally conducted. A vetting process should be put in place for all judicial and other officials of the envisaged mechanism so as to guarantee the expertise, independence and impartiality of those involved in the whole judicial accountability mechanism, bearing in mind also that enforced disappearances and other crimes against humanity can never be dealt with by a military jurisdiction. The Working Group considers that trying only few emblematic cases and prosecuting a token number of perpetrators will not be sufficient for Sri Lanka to comply with its international obligations nor to satisfy the expectations of the victims and important sectors of society. Given that, in many instances, enforced disappearances occurred in a systematic way, the mechanism should have the expertise, capacity and credibility to investigate this aspect. The passage of time since most of the enforced disappearances started to occur is in direct proportion to the constraints — and, in some cases, the impossibility — of obtaining evidence or testimonies that would help to clarify the disappearances, identify the possible perpetrators and participants and determine criminal responsibility. The delay in starting, conducting or concluding timely

[6] See A/HRC/30/61, para. 88.

investigations do not exonerate State authorities from making the efforts necessary to comply with the obligation to secure the right to justice.

52. For judicial efforts to succeed, incentives will have to be provided for witnesses to be willing to testify. The Working Group received reports that persons with crucial information have refused to testify out of fear. It was also informed about instances of harassment of witnesses.

53. The Working Group is extremely concerned that relatives of disappeared persons and organizations have been harassed and intimidated in different ways owing to their involvement in the investigation of cases of enforced disappearance. The Working Group was informed that relatives of the disappeared have received several visits from intelligence officers, police officers or army personnel and have been questioned about their activities and the meetings they attend. Most of the allegations pointed directly to officers of the Criminal Investigation Department. Civil society organizations supporting the relatives of the disappeared in their search for truth and justice have also been subjected to open threats and intimidation or pressure to discontinue their quest. The Working Group also heard allegations that some of the people with whom it had met had been questioned about its visit. In a democratic society, such harassment and control are absolutely impermissible and constitute an additional human rights violation. Such behaviour may even be considered as an attempt to cover up the disappearances and should be severely sanctioned. The Working Group urges the Government to call for these types of activities to cease immediately and that the highest authorities make a clear statement affirming the legitimacy of the activities of relatives and their associations to search for truth and on the State's obligation to protect and ensure the right of relatives of the disappeared to seek truth, justice, reparation and guarantees of non-repetition, in accordance with article 13 (3) and (5) of the Declaration.

54. In some cases, police or intelligence officers have visited relatives of disappeared persons to genuinely inquire about the case concerning their loved ones. However, many times they ask the same basic questions that the relatives have already answered several times. In that respect, the Working Group is concerned about the retraumatization effect of such repetitive inquiries and that those responsible for the investigations seem to be relying on the information provided by relatives rather than assuming the investigations as a State obligation.

55. The Working Group is extremely concerned about detailed allegations that Criminal Investigation Department personnel have engaged in sexual harassment and violence against mothers or wives of disappeared persons, including in exchange for providing information on their relatives' cases. This should cease immediately and those responsible should be severely punished. The Working Group is also concerned at consistent allegations that, in many instances, relatives are asked by unidentified individuals for money in exchange for bringing back loved ones, which almost never happens.

56. The Working Group received extensive information on the application of the writ of habeas corpus in Sri Lanka and notes that habeas corpus has not been as effective as it could be. In the few cases that habeas corpus proceedings have moved forward, the writs took an unreasonably long period of time, which undermined their effectiveness. The first hours or days following a disappearance are essential to the protection of the victim and the potential success of the habeas corpus. It is of particular concern to the Working Group that magistrates appear to act in a very passive manner in most habeas corpus proceedings, limiting themselves to requesting written information.

57. The Working Group welcomes the appointment of new commissioners to the Human Rights Commission of Sri Lanka and recommends that the Government ensure the allocation of adequate human and financial resources to enable the commission to effectively carry out its mandate.

V. Reparation

58. All victims of enforced disappearances have the right to full reparation in accordance with article 19 of the Declaration.

59. The Working Group received extensive testimonies about the extremely difficult economic situation that the relatives of many of those who have disappeared suffer. In particular, the Working Group witnessed how many mothers and wives have been left in situations of desperate economic hardship without any type of State support.

60. As stated earlier, in cases of enforced disappearance, the victim is not only the disappeared person but also any individual, in particular the next of kin of the disappeared, who suffers as a result of the disappearance. Relatives endure pain and anguish as a consequence of the continuous uncertainty about the fate or whereabouts of their loved ones.

61. In the vast majority of cases, the disappeared persons are men and it is the women who are left alone. The gendered dimension of the phenomenon of enforced disappearances should be duly taken into consideration. The Working Group met with hundreds of women — mothers, wives, sisters, daughters — of disappeared persons. They shared their stories of suffering, economic hardship and despair resulting from the disappearance of their loved ones. For some of them, several members of their family have disappeared. Many of them referred to the violence, in particular sexual violence, to which they were subjected during the conflict or in their search for truth and justice. These women suffer multiple and intersecting forms of discrimination and violence, including owing to harmful traditional practices in their communities.

62. As in virtually all situations of massive human rights violations, children in Sri Lanka have also paid a high price. Many have lost one or both parents. In its general comment on children and enforced disappearances,[7] the Working Group explains how enforced disappearance affects the rights of children in a different way than those of adults. The Working Group heard tragic stories of children in Sri Lanka being disappeared together with their parents. During its visit, attention for the educational needs of the children of disappeared persons was consistently highlighted as a priority by their families.

63. The chapter on reparations in the 2011 report of the Lessons Learnt and Reconciliation Commission is very brief and focuses only on the Rehabilitation of Persons, Properties and Industries Authority, thereby disregarding other forms of compensation or restitution that may be required and desirable. While Act No. 29 of 1987 that established the Authority provides that the functions of the Authority shall be, inter alia, to assist in the rehabilitation of affected persons by way of an outright grant or any such other means as the Authority may deem necessary, the Authority focuses mainly on the reconstruction of damaged properties. Despite the lack of comprehensive and cohesive national standards on reparation, the Commission did not use this opportunity to formulate such standards.

64. The lack of a coherent, cohesive and comprehensive reparation policy has resulted in a number of victims of enforced disappearance being unable to receive full and integral reparation. According to the information received, relatives of disappeared persons can receive compensation of up to 100,000 rupees upon presentation of a death certificate. This provision is included in legislation dating back to 1988 and the amounts have not been updated since 2009. In contrast, relatives of civil servants who are deceased receive up to 200,000 rupees. Regrettably, the Working Group was informed that the authorities generally make the granting of compensation conditional upon acceptance of death

[7] See A/HRC/WGEID/98/1 and Corr.1

certificates by the families of the disappeared, which, de facto, puts an end to the search for truth and justice regarding the disappearance. This has often been done under duress. In this respect, the Working Group emphasizes the need for legislation that clearly stipulates that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice or truth. Thus, in conformity with the Working Group's general comments on article 19 of the Declaration regarding the right to compensation, no victim of enforced disappearance shall be presumed dead over the objections of the family.[8] The Working Group therefore welcomes the recent adoption of a policy regarding the issuance of certificates of absence instead of death certificates. The Working Group is concerned that, in many instances, death certificates were sent to families without their express request and, often, they did not properly reflect the disappearance of the person or the alleged author of the disappearance.

65. The Working Group was also informed that relatives of disappeared persons who were alleged to have had ties to terrorist organizations do not have the right to this compensation. Under the international obligations of Sri Lanka, every victim of enforced disappearance is entitled to receive full and integral reparation without any type of discrimination. The Working Group was also informed of the budgetary limitations of the Rehabilitation of Persons, Properties and Industries Authority, which has resulted in a large backlog. If resources are not increased, it would take at least five to six years before current applicants are compensated.

66. In addition to the punishment of perpetrators and the right of victims to monetary compensation, the right to obtain reparation for acts of enforced disappearance under article 19 of the Declaration also includes the means for as complete a rehabilitation as possible. This obligation refers to medical and psychological care and rehabilitation for any form of physical or mental damage, as well as to legal and social rehabilitation, guarantees of non-repetition, the restoration of personal liberty, family life, citizenship, employment or property, the return to one's place of residence and similar forms of restitution, satisfaction and reparation that may address the consequences of the enforced disappearance.[9]

67. In the context of resettlement, the Working Group encourages the authorities to take into account, inter alia, the link between displacement and disappearance. The relatives of many of the disappeared are also suffering from displacement and are therefore suffering further victimization. Similar attention should be paid to the restitution of land for the families of disappeared persons who have been displaced. The Working Group was particularly disturbed at the extensive and continuing military occupation of private land, particularly in the Northern and Eastern Provinces. It was informed that a significant number of people in these provinces continue to be displaced, including owing to the failure on the part of the Government to release lands that are occupied by the military. The Working Group was also informed that the Government has not taken adequate steps to facilitate the voluntary return of Muslims who were forcibly expelled by LTTE from the Northern Province in 1990. The Working Group welcomes the commitment by the Government to give priority to families of missing persons in the housing programme of the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs and its recognition of the importance of releasing land in the Northern and Eastern Provinces.

[8] See E/CN.4/1998/43, para. 74.

[9] Ibid., para. 75.

VI. Memory

68. The Working Group visited the Monument for the Disappeared in Raddoluwa Junction, Seeduwa, in the Western Province, which was erected at the place where the bodies of two disappeared trade union activists, H.M Ranjith and H. Lional, were found in 1989. While the monument and other memorials serve as a constant reminder of the atrocities committed and are a place for families to honour their disappeared loved ones, the Working Group is concerned about the limited number of memorials and spaces for people to remember and reflect, especially given the dimension of the enforced disappearances in Sri Lanka. The Working Group is especially concerned that there is no government-supported memorial built for the victims of enforced disappearances. Memory should be a key component in the transitional justice programmes, including as a fundamental element of reparation and a way of preventing the recurrence of further massive human rights violations. The Working Group stresses the importance of State-sponsored memorials as well as the State's support for civil society remembrance initiatives, including their proper maintenance.

69. The Working Group recognizes the importance of the declaration of peace made by the Government at the Independence Day ceremony on 4 February 2015, which pays respect to all those who lost their lives in the internal armed conflict and pledges never to allow the recurrence of such violence. It also recognizes the significance of the singing of the national anthem in Tamil on 4 February 2016. With respect to Victory Day (renamed from Armed Forces Remembrance Day), which is marked on 19 May to pay tribute to all those who sacrificed their lives for the country, the Working Group noted that, although there was no triumphalist exhibition of military strength, the event nevertheless focused on members of the armed forces and their families and that at no point were the civilians who lost their lives in the armed conflict mentioned. A more comprehensive memorial and remembrance policy should be devised and implemented.

IV. Conclusions

70. **The Government's invitation to the Working Group and its increasing openness to international engagement are very positive and encouraging steps. Today, the challenge facing the Government of Sri Lanka is to transform its promises into a concrete, comprehensive, legitimate and participatory framework aimed at securing the rights to truth, justice, reparation and memory, and guarantees of non-repetition for the families of the disappeared and Sri Lankan society as a whole, in the context of a reconciliation process.**

71. **It is encouraging that the Government is proposing a comprehensive public policy to deal with prevention, investigations, sanctions and reparation for the victims of enforced disappearances.**

72. **Overall, the victims of enforced disappearances have very little faith in the justice system, the prosecution services, the police or the armed forces. The chronic pattern of impunity still exists with regard to cases of enforced disappearance and sufficient efforts now need to be made to determine the fate or whereabouts of persons who have disappeared, punish those responsible and guarantee the right to truth and reparation.**

73. **Any successful initiative must therefore be the result of a broad, inclusive, gendered and participatory consultative process. Any comprehensive policy should address all the enforced disappearances that took place in the country, regardless of the time of the disappearance and without any type of discrimination. The**

Government will need to adopt bold steps to reach out to and create confidence in the victims. In addition, good faith measures and concrete results are needed to restore trust between the State and all sectors of society as well as between all groups and communities.

74. The Working Group reiterates its willingness to continue its constructive dialogue with the Sri Lankan authorities and offers its unreserved support for the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.

75. The Working Group reaffirms its solidarity with the victims of enforced disappearance. Their continued suffering is living proof that enforced disappearance is a continuous offence and a permanent violation of their human rights so long as the fate or whereabouts of the disappeared person is not clarified.

76. The Working Group acknowledges the work done by human rights defenders, civil society organizations, lawyers and all those who work indefatigably, including in adverse conditions, to eradicate this terrible practice.

VIII. Recommendations

General

77. The Working Group recommends that the Government of Sri Lanka:

(a) Take decisive actions and give clear orders at the highest level to stop surveillance, threats, intimidation, harassment — including sexual harassment — and abuses against relatives of disappeared persons and those acting on their behalf;

(b) Guarantee the safety of those who met with the Working Group and protect them against any form of reprisal, threat or intimidation;

(c) Instruct all public officials that those actions will not be tolerated and will be punished accordingly.

Legislation

78. The Working Group recommends that the Government of Sri Lanka:

(a) Recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction, in accordance with article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance;

(b) Ratify:

(i) The Rome Statute of the International Criminal Court;

(ii) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(iii) The Protocols additional to the Geneva Conventions of 12 August 1949;

(c) Adopt comprehensive legislation on enforced disappearances without delay and ensure that it provides for:

(i) A specific procedure for finding a disappeared person;

(ii) A national register of forcibly disappeared persons;

(iii) **Full access to this register by relatives of the disappeared, lawyers, human rights defenders and any other concerned person;**

(iv) **The declaration of absence in respect of enforced disappearance;**

(v) **Full protection and support to the relatives of disappeared persons and to witnesses;**

(vi) **The right to full compensation;**

(vii) **The explicit definition of enforced disappearance as a continuous crime to which amnesties, immunities or the statute of limitations cannot be applied, notably in the context of crimes against humanity;**

(viii) **The rights of victims to pursue truth and justice even if a certificate of absence is issued and coverage of all disappearances regardless of the time of their occurrence;**

(ix) **Details about the resources available to families upon the issuance of a certificate of absence;**

(d) **Swiftly make enforced disappearance a separate offence consistent with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance and punishable by appropriate penalties that take into account its extreme seriousness. The offence should also cover the various modes of criminal liability, including committing, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to or participating in an enforced disappearance. It should also expressly provide for the sanctioning of command or superior responsibility for such crime;**

(e) **Immediately repeal the Prevention of Terrorism Act and replace it by legislation that is in conformity with the international obligations of the State;**

(f) **Review the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 in order to incorporate better safeguards for the independence and effectiveness of the victim and witness protection programme in line with international standards. Revisions must include the establishment of a well-resourced and effective victim and witness protection programme outside the control and purview of the regular law enforcement apparatus. In addition, the Government should ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police and all other personnel assigned to this programme are fully vetted;**

(g) **Ensure that each and every existing and new complaint made about a missing person is properly registered and investigated by the police;**

(h) **Ensure that the Attorney General's Department is able to operate independently and pursue prosecutions against any suspected perpetrators of disappearances, irrespective of military rank or official position.**

Truth

79. **The Working Group recommends that the Office of Missing Persons:**

(a) **Adopt a victim-centred approach;**

(b) **Be fully accessible to the families of disappeared persons;**

(c) **Envisage procedures that are easily understandable and documents available in Sinhala, Tamil and English;**

(d) Be equipped with all material, financial and human resources necessary to carry out its huge task;

(e) Have the capacity to subpoena information from any source and witnesses, to enter any State institution, and have free access to any State archive;

(f) Have the technical capacity to conduct exhumations, including forensic expertise;

(g) Provide psychosocial assistance to the relatives in all the stages of the search;

(h) Be possibly integrated with an international component.

80. **The Working Group recommends that the Government of Sri Lanka:**

(a) Ensure that documents, materials, physical remains or other elements uncovered by the Office of Missing Persons and that could potentially be used as evidence before a court of law are managed and preserved in such a way that respects a chain of custody and does not jeopardize their admissibility in a judicial process;

(b) Immediately adopt a comprehensive policy to search for all of those who disappeared;

(c) Carry out wide consultation with victims, victims associations and other civil society organizations to establish a new truth-seeking institution, in order to ensure that it adequately responds to victims' needs;

(d) Consider seeking international assistance with regard to the design, establishment, functioning and follow-up of the new Commission for truth, justice, reconciliation and non-recurrence.

81. **The Working Group recommends that the envisaged truth commission:**

(a) Be composed of independent and professional personnel of the highest moral authority and with extensive human rights experience based on a full and thorough vetting process;

(b) Include staff from the civil society;

(c) Be set up through a comprehensive consultative process with all stakeholders;

(d) Be granted adequate human and financial resources as well as ample powers, including the power to summon current and former officials;

(e) Have the capacity to subpoena information from any source and witness, enter any State institution and have free access to any State archive;

(f) Be equipped with the technical capacity, including forensic expertise, to conduct exhumations.

82. **The Working Group also recommends that the Government of Sri Lanka:**

(a) Transfer the cases of the Presidential Commission on Missing Persons to a credible and independent truth-seeking institution established in close consultation with the families of the disappeared; and ensure that those involved in the process of the search for truth were not involved in any way in the commission of past disappearances;

(b) Ensure that the relevant information generated through previous truth-seeking mechanisms is adequately compiled and formally analysed as a starting point to determining the fate or whereabouts of the disappeared and supporting the

investigation and prosecution of alleged perpetrators; make public and easily accessible all of the reports of previous truth-seeking mechanisms and commissions, including interim reports and other material that had been withheld;

(c) Establish institutional safeguards to make sure that the families of disappeared persons will not suffer any form of revictimization, including by ensuring they will not be requested to reiterate testimonies that they had already given;

(d) Be proactive in carrying out a proper investigation of existing mass graves and in identifying new ones;

(e) Examine, without undue delay, all locations of potential mass graves;

(f) Establish a professionally skilled special unit to probe into the locations of other possible mass graves, reinforce the forensic capacity of the judiciary and ensure that it has adequate resources, including for DNA testing and forensic anthropology and archaeology;

(g) Ensure the proper investigation of existing mass graves, proper preservation of the sites and protection of the chain of custody of the samples. With regard to the Matale mass grave, in particular, the investigation should be reopened and other samples should be sent for further analysis, in the light of the huge discrepancy relating to the dating of the inhumations between the reports currently available on the matter and in the light of the reported signs of torture and extrajudicial execution on some of the remains;

(h) Strengthen the capacity of the DNA laboratory in the Government Analyst's Department and ensure its functional and structural independence from security and law enforcement agencies;

(i) Consider requesting international support for forensic investigations and exhumations as well as for the ensuing investigations and prosecutions, which should be the responsibility of a transitional justice mechanism rather than of the Attorney General's Department;

(j) Immediately open archives, including military archives, relevant to cases of enforced disappearance in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons;

(k) Promulgate a law on access to information and develop a proper legislative framework on archives so as to guarantee full access to all information that could potentially lead to clarification in cases of disappeared persons;

(l) Develop a gender-sensitive policy and action plan to provide support and rehabilitation for families of disappeared persons, including specific measures to support families of disappeared persons whose death is confirmed through the new truth-seeking processes;

(m) Adopt a gender and child-rights perspective in all policies aimed at reparation, truth and justice, based on the standards developed by the Working Group in its general comments on children and enforced disappearances (see A/HRC/WGEID/98/1 and Corr.1) and on women affected by enforced disappearances (A/HRC/WGEID/98/2).

Justice

83. The Working Group recommends that the Government of Sri Lanka:

(a) Establish a judicial accountability mechanism that integrates international judges, prosecutors, lawyers and investigators;

(b) Guarantee that criminal investigations of enforced disappearances are conducted from the outset by a highly professional and specialized team of prosecutors;

(c) Ensure that the armed forces do not have a role nor can intervene in the investigation, prosecution and trial of these crimes;

(d) Ensure that the judicial accountability mechanism comprises all stages of the prosecution and judicial process and provide access and information to the families of disappeared persons;.

(e) Establish a process to vet all judicial and other officials of the envisaged judicial accountability mechanism in order to secure the professionalism, expertise, independence and impartiality of all those involved in the mechanism;

(f) Bring to trial all cases of enforced disappearance, regardless of the author and the time when they were committed;

(g) Ensure that prosecutors and courts have the capacity to handle all cases of enforced disappearance;

(h) Investigate the material and intellectual authors of such crimes, as well as those hierarchically accountable under the principle of command responsibility;

(i) Carry out all investigations, prosecutions and judicial proceedings in accordance with the principle of due diligence, taking into account the complexity of the enforced disappearances, the context in which they occurred and the patterns that explain why the events occurred, and ensure that there are no omissions in the gathering of evidence or in the development of lines of investigation;

(j) Take all the measures necessary to investigate cases, try and prosecute perpetrators considering the systematic patterns that allowed the commission of serious human rights violations, including enforced disappearances;

(k) Guarantee that the authorities in charge of the investigation have the jurisdictional, logistic and scientific resources necessary to collect and process evidence, and notably the power to access all documents and information relevant to the investigation, including on the possible locations of the victims;

(l) Include in the judicial accountability mechanism trial and appeals chambers, specialized prosecution and defence units, proper units for victim support and witness protection and a professional and competent registry;

(m) Victims and relatives should have extensive opportunities to participate in and be heard during the investigative and judicial proceedings — both with regard to the clarification of enforced disappearances and the punishment of those responsible — and in seeking fair compensation;

(n) Facilitate recourse to the assistance of independent lawyers for the families of disappeared persons during criminal trials;

(o) Adopt legislation to grant more powers to magistrates to ensure the effectiveness of habeas corpus. Magistrates should assume a proactive role in habeas corpus proceedings in order to adopt and carry out all the effective measures necessary to protect a person who allegedly disappeared and secure his or her appearance.

Reparations

84. **The Working Group recommends that the Government of Sri Lanka:**

(a) **Develop, as a matter of urgency, a national reparations policy taking into account the specific needs of women and children and make adequate provisions for it in the State budget;**

(b) **Make reparation measures accessible and applicable to families who accept the issuance of death certificates under duress or without their full and informed consent. In particular, the Government should issue a certificate of absence owing to enforced disappearance and allow all interested families to exchange the death certificate issued for the new certificate of absence due to enforced disappearance;**

(c) **Pay particular attention to adequate, professional and victim-oriented psychosocial assistance for the relatives of the disappeared in relation to both truth and justice processes, in the context of the forthcoming transitional justice mechanisms;**

(d) **Adopt and strengthen existing psychosocial support programmes for victims;**

(e) **Establish mechanisms that provide for social allowances or appropriate social and medical measures for the relatives of disappeared persons in relation to the physical, mental and economic consequences resulting from the absence of the disappeared;**

(f) **Prioritize the educational needs of the children of disappeared persons, including establishing special scholarships exclusively for children of disappeared persons;**

(g) **Formulate and adopt a national resettlement policy to adequately address the needs of displaced persons and victims of enforced disappearances and incorporate the existing national involuntary resettlement policy into domestic law;**

(h) **Pay equal attention to all victims, regardless of their ethnicity, in respect of memorials and consider integrating this principle into future activities related to this element of reparation;**

(i) **Sponsor memorials as well as provide support for civil society remembrance initiatives, including for their proper maintenance through public funds;**

(j) **Erect national and local monuments and establish commemoration days aimed specifically at remembering disappeared persons;**

(k) **Consult with families and other stakeholders in the design of such monuments and in the planning and conducting of commemoration events.**

85. **The Working Group invites the Government of Sri Lanka to submit within 90 days of the date of presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.**

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru

Note by the secretariat

The secretariat has the honour of transmitting to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru.

At the invitation of the Government of Peru, the Working Group visited the country from 1 to 10 June 2015.

The Working Group thanks the Government of Peru for the invitation to visit the country and for its cooperation before and during the visit.

The Working Group found that the country has been transformed in the 30 years since its first visit, although deep inequalities still persist. Since 2000, important steps have been taken in relation to enforced disappearance, such as the establishment of the Truth and Reconciliation Commission, the exhumation, identification and return of hundreds of remains, and the provision of reparations. This progress has been achieved thanks to initiatives set in motion or carried out by the relatives of the victims or by civil society and by certain sectors of the State. In accordance with its international obligations, the State must assume this responsibility and play a leading role in ensuring that these initiatives are part of a comprehensive, consistent and continuous State policy carried out in cooperation and collaboration with the victims and their relatives.

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru*

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* This report is being circulated in the language of submission and English only.

I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances visited Peru from 1 to 10 June 2015, at the invitation of the Government. The Working Group thanks the Government for the invitation and for its cooperation before and during the mission, as well as its openness to dialogue. In addition, the Working Group expresses its gratitude to the associations of relatives of disappeared persons, the civil society organizations and, in particular, the relatives who provided information and testimonies. Lastly, the Working Group thanks the United Nations system in Peru and the Office of the United Nations High Commissioner for Human Rights for their valuable support.

2. The Working Group commends the Government for ratifying all United Nations human rights treaties, including the International Convention for the Protection of All Persons from Enforced Disappearance, and the Inter-American Convention on Forced Disappearance of Persons. The Government of Peru has extended a standing invitation to all the United Nations special procedures mandate holders.

3. The Working Group was represented by Mr. Ariel Dulitzky (Argentina) and Ms. Houria Es-Slami (Morocco). The purpose of the visit was to examine the main initiatives and policies undertaken by Peru in relation to cases of enforced or involuntary disappearance, particularly those that occurred between 1980 and 2000, as well as those that may have occurred subsequently — for various reasons — and to analyse in particular the aspects relating to justice, truth, reparation and memory for victims of enforced disappearance. This is in the light of the Declaration on the Protection of All Persons from Enforced Disappearance, which reflects, codifies and consolidates the customary international law that is legally binding on all States, including Peru.

4. In addition to the capital, Lima, the Working Group visited the cities of Ayacucho and Huánuco. It held meetings with high-level officials of the executive, legislative and judicial branches of government, as well as the Public Prosecution Service. These meetings helped the Working Group to understand the policies that the Government is implementing and provided the substantive basis for the present report.

5. The Working Group also met with representatives of the Ombudsman's Office. In addition, it met with numerous national and international NGOs, relatives of victims of enforced disappearance, persons who have been the victims of enforced disappearance and other stakeholders in society, including former members and the relatives of members of the Peruvian security forces.

6. The Working Group visited Peru for the first time in 1985 and conducted a follow-up visit in 1986. Since its establishment, the Working Group has received 3,010 complaints of enforced disappearance, of which 2,370 remain open and have yet to be resolved. As is the case in other countries, the number of complaints received by the Working Group represents only a fraction of the total number of cases of enforced disappearance in Peru.

7. The political and socioeconomic situation in the country has changed dramatically since the Working Group's previous visit in 1986. The democratic context is now different, and much progress has been made. In particular, the policy of carrying out systematic human rights violations, including enforced disappearances, has been abandoned.

8. The internal armed conflict that lasted from 1980 to 2000 was extremely brutal and left deep wounds and resentment among the population. Quechua-speaking and indigenous population groups, such as the Asháninka, as well as rural population groups and people living in poverty, were disproportionately affected. According to the Truth and Reconciliation Commission, 75 per cent of the persons who died in the internal armed

conflict spoke Quechua or other indigenous languages as their mother tongue. The Working Group saw, particularly in the course of its travels in the hinterland, that discrimination, exclusion and marginalization — conditions which were used by certain terrorist and subversive armed groups to serve their own ends to the detriment of human rights — are still evident, which partly explains the limited progress achieved in the areas of truth, justice and reparation. The Working Group found that the wounds left by the political violence remain open and very fresh among the victims. In particular, the Working Group highlights the intense suffering and serious long-term consequences experienced by Peruvian women.

9. In order to overcome the tragic effects of enforced disappearance on the victims and on society, strong political leadership is needed to design and implement comprehensive public policies that take into account ethnic, cultural and racial diversity, as well as a gender perspective and the living conditions of the victims and their relatives. This process should be carried out as a matter of urgency, in view of the long time that has elapsed since the events took place. Many of the relatives, witnesses and perpetrators have died, which means that a great number of the opportunities for gathering testimonial evidence, as well as for providing effective redress to the victims, are disappearing. Much of the material evidence is also being irretrievably lost.

10. The Working Group received conflicting information regarding the total number of victims of enforced disappearance. In the Central Register of Victims, there are 8,661 registered cases. It is widely recognized, however, that the real figure may be much higher. The International Committee of the Red Cross, the Public Prosecution Service and the Peruvian Forensic Anthropology Team estimate the figure to lie between 13,000 and 16,000 victims of enforced disappearance. These discrepancies make it difficult to appreciate the true dimensions of the problem and to effectively develop, implement and monitor comprehensive public policies. The Government has reported that, together with the International Committee of the Red Cross, it is seeking to promote coordination with a view to centralizing the information held by private and public institutions.

11. The country's citizens continue to be deeply divided in their perceptions and interpretations of the events of the past. Reconciliation is still ongoing and appears to be some way off, and, following the work of the Truth and Reconciliation Commission, no lasting national process been put forward with a view to achieving reconciliation.

II. Legal and institutional framework

12. The Working Group welcomes the fact that Peru has ratified the main human rights treaties, and in particular the International Convention for the Protection of All Persons from Enforced Disappearance. The Working Group also welcomes the adoption by Congress on 21 April 2016 of legislation recognizing the competence of the Committee on Enforced Disappearances to receive and consider individual communications.

13. The Working Group recognizes that article 320 of the Criminal Code, contained in Title XIV-A, "Crimes against humanity", stipulates that: "Any civil servant or public official who deprives a person of his or her liberty by ordering or carrying out an act the result of which is that person's duly proven disappearance, shall be liable to no less than 15 years' imprisonment and disqualification". Article 29 of the same Code establishes 35 years' imprisonment as the maximum penalty for enforced disappearance. The Working Group deplores the fact, however, that the definition and its interpretation are restrictive, so that not all acts of enforced disappearance are covered by that definition — a fact that the State itself acknowledges. Among other things, the phrase "duly proven" establishes a requirement that runs counter to international provisions. Moreover, the definition does not

recognize the possibility that private actors may be perpetrators of the crime of enforced disappearance if they act with the tolerance or acquiescence of State agents. The definition's incongruity with the Declaration and other international instruments, which is to some extent moderated by case law, contributes to impunity in the vast majority of cases of enforced disappearance. The draft reform of the Criminal Code will constitute a significant improvement by amending the definition of the offence of enforced disappearance to bring it into line with the definition set out in international law.

14. The special register of persons missing on account of enforced disappearance was established in 2004 by Act No. 28413. However, only 1,915 certificates have been issued to date, which might be explained by the cumbersome process requiring approval from the Ombudsman's Office, followed by judicial proceedings, in order to register.

15. The Working Group commends the establishment by Act No. 29809 of 2011 of a human rights governing body in the form of the Ministry of Justice and Human Rights. It highlights in particular the establishment within the Ministry of the Vice-Ministry for Human Rights and Access to Justice, which is responsible for drafting, coordinating, implementing and monitoring public policy on human rights and access to justice, including issues relating to enforced disappearance. The Working Group also welcomes the adoption by Congress on 26 May 2016 of the Act on the Search for Persons Who Disappeared during the Period of Violence from 1980 to 2000 (Bill No. 5290/2015), which provides for, inter alia, the implementation of a national plan for searching for disappeared persons.

16. There is no comprehensive legislation in Peru that covers all matters relating to enforced disappearance. As the Government mentions, legislation on the matter is fragmented and scattered, and in the different pieces of legislation various State institutions assume different responsibilities and follow different approaches. While the State maintains that this series of measures is aimed at creating a comprehensive legal framework, the Working Group views the recent adoption of the aforementioned Act as the first step taken towards adopting a coordinated, consistent, comprehensive, participatory and effective public policy to overcome some of the problems identified in this report.

17. The Working Group recognizes the important work carried out by the Ombudsman's Office to support the relatives of victims of enforced disappearances and to monitor and promote public policies on truth, justice, reparation and memory. Since its establishment, the Ombudsman's Office has been the only State body to consistently and continuously study the issue of enforced disappearance, identify progress or setbacks, and systematize the practice of disappearance and the State's response to it. It does this by issuing reports, helping to implement the special register of persons missing on account of enforced disappearance, supporting relatives and participating in numerous activities organized by the Government and society. In Lima as well as in Ayacucho and Huánuco, the Working Group noted the credibility and respect accorded to the Office by the various stakeholders. The Working Group believes that the failure to appoint an Ombudsman is hindering the Office's proper functioning and that the authorities should appoint one as soon as possible. It was the Ombudsman's Office that submitted to Congress the bill on the search for disappeared persons in April 2016.

18. In 2014, Peru adopted the National Human Rights Plan 2014-2016, along with other plans that address the issue of enforced disappearance, such as the national plan for education on fundamental rights and responsibilities, in force until 2021. During its visit, the Working Group heard civil society organizations criticize the National Human Rights Plan, in particular for failing to take due account of the participatory process that was carried out and for failing to listen to civil society organizations and give proper consideration to all their proposals.

III. Right to truth

19. Broad sectors of society are demanding to know the truth about the fate or whereabouts of the persons who disappeared. A number of associations of relatives and victims have been established which, together with NGOs, constitute an active civil society that is working to achieve that objective. The right to truth is an absolute right and a State obligation under the Declaration.

20. Major institutional processes have sought to reveal the truth about the cases of enforced disappearance. In particular, there was the establishment of the Truth and Reconciliation Commission in 2001, which drafted a comprehensive report based on thousands of interviews and testimonies collected from all the victims of the internal armed conflict, using a methodology that was in line with international standards. It also recognized the mass violence that occurred, estimating that Sendero Luminoso was responsible for 54 per cent of all the deaths.

21. In 2003, the Truth and Reconciliation Commission issued several crucial recommendations, but 12 years on the majority of those have yet to be implemented and still remain valid. No national commission for disappeared persons has been established, nor has any office for persons who disappeared during the internal armed conflict been set up. While an agreement was signed in 2006 between the Peruvian Forensic Anthropology Team and the regional government of Ayacucho to establish the first regional office for disappeared persons, and various workshops and activities were conducted to share good practices, the initiative did not come to fruition. Moreover, no national plan for forensic anthropological investigations has been established on the basis of the National Registry of Burial Sites developed by the Truth and Reconciliation Commission, as provided for in the new Act on the Search for Disappeared Persons. The Truth and Reconciliation Commission also recommended establishing a database that would allow for continuity in proceedings launched while the Commission was active and would include data from ante-mortem files, post-mortem analysis, genetic information, testimonies, graphic and photographic information, as well as the adoption of search protocols and the development of projects to obtain funding for forensic anthropological investigations.

22. The Working Group recognizes the great challenges the country is facing in its efforts to establish the truth. Its geographical characteristics hinder the search, as some of the areas where cases of enforced disappearance occurred are inaccessible. The time elapsed since the events occurred has resulted in further decomposition of the bodies and degradation of the places where they might have been buried. In many cases, the bodies were incinerated — making it even more difficult to identify them through DNA testing — or thrown into rivers. The Working Group also wishes to highlight the serious challenges faced by the forensic teams and prosecutors when they have to enter drug trafficking areas to carry out their investigations.

23. While the State is under an obligation to uncover the truth, in many cases it is not possible to individually identify each one of the victims. Indeed, experts and many of the families acknowledge that, in some places, exhumation is neither possible nor desirable. As the Working Group states in its general comment on the right to the truth, "there is an absolute obligation to take all the necessary steps to find the person, but there is no absolute obligation of result. Indeed, in certain cases, clarification is difficult or impossible to attain, for instance when the body, for various reasons, cannot be found. ... The State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person".

24. Much remains to be done in terms of uncovering the truth. State efforts should be strengthened, and a new understanding of the purpose of the search is needed. It is virtually

unbearable for the relatives of the victims to accept that, more than 30 years after the events took place, they still do not have any information about the fate or whereabouts of their loved ones. Under the current circumstances, a more proactive and decisive State policy is needed to strengthen the search for the victims of enforced disappearance and thereby shed light on those cases.

25. Peru has opted for a prosecutorial rather than a humanitarian strategy in the search for disappeared persons. This means that the search for disappeared persons is carried out by judges and prosecutors as part of investigations that are mainly aimed at determining the criminal responsibility of the perpetrators, as opposed to determining the whereabouts of the disappeared person. Criminal investigations generally help to shed light on cases of disappearances. An effective criminal investigation can provide incentives for persons who have relevant information to share that information with the authorities conducting the search for the disappeared persons. Article 4.2 of the Declaration provides for the establishment of mitigating circumstances for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance. The Government states that habeas corpus is the appropriate judicial mechanism for determining the whereabouts of a disappeared person, though it does not provide evidence of any concrete results produced by means of this remedy.

26. This prosecutorial strategy, however, severely limits the success of the search. The criminal investigation and the search have two different objectives. The workload faced by judges and prosecutors, their lack of knowledge of search techniques, and the focus of the legal investigation on collecting and using evidence rather than on finding and identifying the disappeared person also hinder further progress. There is a need for a new understanding of the purpose of the search in order to strengthen its humanitarian aspect.

27. According to the Government, between 2002 and January 2016, a total of 3,410 bodies were recovered, of which 1,973 were identified and 1,804 were returned to the families. However, about half of the bodies exhumed and identified were remains of victims of summary killings. Also, in a number of exhumations, the identity of the victims was already known or presumed, and the aim was to scientifically determine the cause of death or their identity. These figures show just how slow and unhurried the process is. Unfortunately, many relatives have died and many others are of an advanced age and have still not received any information about the fate or whereabouts of their loved one after 30 years.

28. The Working Group noted that Peru does not have a national plan for searching for disappeared persons or a public map of potential grave sites where disappeared persons might be buried. The Act on the Search for Disappeared Persons provides for the establishment of both these tools. It is estimated that there are some 6,000 graves in Peru that have not yet been excavated.

29. The Working Group notes that Ayacucho was the epicentre of the violence that occurred between 1980 and 2000 and that a large percentage of the victims were from that region. The Central Register of Victims includes records of 3,960 victims of enforced disappearance in Ayacucho alone. A large number of excavations and exhumations have therefore taken place there, though there have still not been enough of these, and they have not been conducted with the necessary urgency. At the same time, the lack of a national plan for searching for disappeared persons has meant that other regions are not receiving the level of attention needed.

30. Under the current prosecutorial strategy, searches for disappeared persons are the responsibility of the Public Prosecution Service and are led by prosecutors. The Working Group welcomes the establishment of the Specialized Forensic Team in 2013 and the

significant contribution it is making. The Team was established by the Institute of Forensic Medicine in coordination with and under the supervision of the Attorney General's Office, which demonstrates once again the prosecutorial focus of the search strategy. The Team's purpose is to search for, identify and determine the cause of death of the many disappeared persons and victims of summary killings. The Specialized Forensic Team is made up of anthropology experts, both socioanthropologists and bioanthropologists, archaeologists, doctors, dentists and geneticists, as well as support staff such as photographers and radiographers. Its capacity is restricted, however, by limited financial and human resources. Due to this shortage of staff and resources, more than 300 remains have not yet been analysed or identified, which means that the process is extremely drawn out.

31. The Working Group was informed that positive results have been achieved in cases where specialized civil society organizations, associations of relatives and State bodies have cooperated with each other in the search, exhumation, identification and return of the remains of disappeared persons. Some civil society organizations have said, however, that the Specialized Forensic Team does not work with them in a coordinated and cooperative manner.

32. The Working Group witnessed first-hand the efforts being made to equip the Dr. José Macera Tito Forensic Anthropology Laboratory in Ayacucho with high-quality infrastructure, under the aegis of the Institute of Forensic Medicine. On the positive side, the Laboratory boasts, inter alia, specialized doctors, a multidisciplinary team and state-of-the-art equipment for the identification of remains, in addition to adequate infrastructure to carry out these procedures. It is regrettable, however, that the laboratory does not have the capacity to complete DNA analysis in Ayacucho and must send the samples to Lima and arrange for their return. It is also regrettable that the team members are few in number and must handle requests from all over the country, and that their capacity to carry out their work is severely restricted by budgetary constraints. It has been reported that the chemical reagents needed for DNA analysis are often unavailable.

33. In Peru, there is no genetic databank for all relatives of disappeared persons; moreover, DNA is not always used as a means of identification. The Act on the Search for Disappeared Persons provides for the establishment of a genetic databank that would fulfil this function.

34. When visiting the La Hoyada Shrine of Remembrance in Ayacucho, the Working Group was able to observe the investigative capacity of the Public Prosecution Service and the Specialized Forensic Team. La Hoyada is located next to the Los Cabitos military base — the headquarters of the Military Political Command of Ayacucho — which was used during the internal armed conflict as a place of detention, torture, killing and enforced disappearance. According to some accounts, the bodies of 300 persons believed to have been killed in Los Cabitos were exhumed and incinerated in La Hoyada. The report of the Truth and Reconciliation Commission includes testimonies concerning 138 cases of persons being kidnapped, tortured or killed by the security forces in Los Cabitos between 1983 and 1984. Between 2005 and 2009, the Institute of Forensic Medicine carried out exhumations in cooperation with the Peruvian Forensic Anthropology Team, when they unearthed 109 bodies in total (including about 50 intact bodies and the partial remains of some 50 more persons). In addition, they also found four furnaces — one of which had human remains inside it — which were presumably used to incinerate the bodies of victims of summary killings, as well as the pipes that supplied energy to those furnaces.

35. In La Hoyada, the Working Group also noted many difficulties that reflected existing structural problems in the search for disappeared persons. La Hoyada has yet to be completely excavated. In addition, traces of bodies are said to have been found in the "*chancheria*" (pork-butcher's shop) within the Los Cabitos military base, as well as on the hillsides of La Hoyada that have yet to be explored. According to some experts, La Hoyada

should be maintained as an open area, and the system of digging pits, as has been done thus far, should be avoided. The exhumation work began in 2005, but due to a lack of resources it had to be suspended and was resumed only from 2007 to 2009. Lastly, the difficulties faced when identifying the remains are a matter of concern. Of the 109 remains recovered from the graves in La Hoyada, only 4 have been identified.

36. Not all places where the remains of disappeared persons might be located benefit from proper protection and conservation measures. This jeopardizes the possibility not only of finding and identifying disappeared persons but also of gathering evidence to bring the persons responsible to justice. One of the biggest challenges noted is that many military bases have not been searched or excavated. It has also been reported that schools or other structures are being built on the site of other former military bases without due attention being given to the possibility of finding the remains of disappeared persons. Of the 31 hectares originally covered by La Hoyada, only 7 hectares remain, as squatters have occupied the land. This not only jeopardizes the possibility of securing truth and justice but is also an insult to and revictimization of the victims' relatives.

37. Actions of recognition and symbolic redress for 722 victims of enforced disappearance were taken between 2011 and 2015 by handing over coffins containing returned skeletal remains. The Working Group was informed about the practice of holding mass ceremonies for the return of remains. These ceremonies are organized by the prosecuting authorities in coordination with the High-Level Multisectoral Committee and other national and regional authorities. This form of return, which may involve the return of a single body or up to dozens of bodies at one time, is symbolically very important because it offers a way to measure the scope of the problem by the number of relatives who come to receive the remains of their loved ones. At the same time, however, it creates logistical problems and is not always appropriately handled by the authorities, which creates a sense of revictimization among the relatives. In some cases, the necessary attention was apparently not given to the issue of providing transport, accommodation and food to the family members who come to receive the remains, who often live far away from where the ceremony takes place. Also, there is no individualized, appropriate approach that meets the specific wishes of each family, as different cases and relatives from different regions, cultures or religious beliefs tend to be lumped together in the same ceremony.

38. The Working Group recognizes that the authorities acknowledge these problems and have begun to take significant steps in this regard. It is concerned, however, that the mass approach continues to be applied as the only return strategy.

39. The obstacles encountered in accessing information and archives are a major problem for victims in their search for the truth. In some cases, documents have been deliberately destroyed. The security archives, and particularly the armed forces archives, are still difficult or well-nigh impossible to access. The State has not provided all the evidence that would make it possible to ascertain the fate and whereabouts of the disappeared persons and would help to find the perpetrators. The authorities have not fully guaranteed access to information and to all the relevant archives. In general there is a reluctance to declassify or allow access to documents.

40. In particular, the armed forces have reported that much of the information does not exist, have provided contradictory information, or have stated that access to the information requested is not possible owing to the magnitude of the search it would need to undertake through its various archives. A number of the military personnel who participated in acts of violence apparently acted under pseudonyms or aliases, which makes it even more difficult to identify those responsible, owing to the absence of any lists containing those pseudonyms. The armed forces have not taken a proactive attitude towards searching for, analysing, organizing and processing the available information that would make it possible to determine the fate or whereabouts of disappeared persons and the circumstances

surrounding their disappearance and to identify those responsible or the manner in which the enforced disappearances were carried out. Nor have the highest government authorities, particularly the Ministry of Defence, issued specific and clear instructions to the armed forces to cooperate fully and proactively in the search for the disappeared, including with regard to accessing and exchanging information.

41. The Transparency and Access to Public Information Act has not enabled or facilitated access to information on disappeared persons. The claim of "reasons of State security" for denying requests for information should be used restrictively and only in exceptional circumstances, because this is a matter of investigating enforced disappearances committed in a context of international crimes. Given the time that has passed, it is hardly reasonable to suppose that State security could be jeopardized by access to these records.

42. To date, the archives of the National Police of Peru have not yet been analysed, systematized, declassified and made available to the judicial authorities and to the general public to facilitate the truth and remembrance process.

IV. Right to justice

43. The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of disappeared persons and of identifying the alleged perpetrators and punishing them with appropriate sanctions. The investigation and prosecution by the competent authority must be thorough and impartial, making use of all the necessary resources and taking all the necessary actions to shed light on the facts, such as calling witnesses and assessing relevant evidence. Access to justice in cases of enforced disappearance and other serious human rights violations constitutes a fundamental right for the victims and their relatives. Prompt, effective and impartial prosecution guarantees that impunity will be tackled head on and that the rule of law will be upheld in the State in question.

44. The Working Group appreciates the establishment of a subsystem of criminal justice to deal with human rights violations, including by conducting specialized investigations into cases of enforced disappearance. It expresses its concern, however, about the extension of the competence of the National Criminal Court to cover other offences, whereas currently only collegiate courts can conduct these types of criminal proceedings.

45. In view of the magnitude of the human rights violations, and particularly the cases of enforced disappearance, as well as the time that has elapsed, a sufficient number of specialized prosecution units and courts must be made available throughout the country to ensure the right of access to comprehensive, effective and prompt justice. The caseload facing judges and prosecutors makes it even more difficult to guarantee this right, so that the Working Group considers it imperative to provide judges and prosecutors with the necessary job stability by reducing the provisional nature of appointments.

46. The Working Group commends the work carried out by the specialized prosecutors at the national level to investigate cases of enforced disappearance, bearing in mind that in many cases they are exposed to dangers, both those inherent to the geographical areas to which they are assigned and those arising from the investigation itself.

47. Judges should receive continuous training both in national legislation and in international standards on enforced disappearance and other crimes against humanity. This training should be based on guidelines governing special proceedings relating to investigation and prosecution as well as interactions with other relevant institutions or bodies and, in particular, dealings with civil parties or relatives of the victims. The Working Group wishes to highlight the itinerant court services offered throughout the country by the

National Criminal Court so as to make direct contact with relatives living in remote areas and with limited resources, and their lawyers. It also encourages the authorities to ensure the meaningful and active participation of victims' relatives and their lawyers in the proceedings, taking into account the logistical aspects and the relatives' economic situation, with a view to ensuring that they are present at key judicial proceedings.

48. This point is essential, especially given that, as the Working Group confirmed in Ayacucho and Huánuco, the responsibility for initiating proceedings often rests solely with the civil parties, as prosecutors do not play an active role in this regard. It is a matter of concern that only a small percentage of cases have been brought to trial and that, of the cases in which a judgment was issued, many resulted in acquittals or in sentences that do not reflect the gravity of the crime committed. The Working Group received different figures concerning the number of convictions handed down by the National Criminal Court. In 2013 and 2014, the National Criminal Court issued 14 judgments in cases of enforced disappearance. As at February 2015, four judgments have been issued for the offence, and three other proceedings are scheduled to begin shortly. This low number of legal proceedings could undermine the important judicial decisions in which the courts have found former military and police officers to be criminally liable, as well as the efforts to arrest and prosecute former members of State security forces for crimes of enforced disappearance.

49. One issue of particular concern to the Working Group is the evaluation of evidence submitted during proceedings to prosecute enforced disappearance. In a significant number of cases, prosecutors have temporarily or permanently shelved cases for a lack of sufficient evidence, particularly testimonies, at the level of the Public Prosecution Service. In some cases, it is even left to the civil parties or the relatives to collect evidence or submit information. Of particular concern is the handling of scientific evidence by the authorities and the primacy accorded to testimonial evidence over scientific evidence. The Working Group has reiterated the importance of using circumstantial evidence when prosecuting cases of enforced disappearance, given the nature of the offence, which necessarily implies the destruction of evidence and the fact that direct evidence is unlikely to be available.

50. Access to information is also a key issue. Restrictions on access to information imposed by officials of the Ministry of Defence, alleging that the information has disappeared or does not exist, indicates a lack of will on the part of the State to uncover the truth and to ensure that thousands of Peruvian victims, direct and/or indirect, of the political violence have unrestricted access to justice. The Working Group recalls the duty of the judicial authorities to demand relevant evidence and the obligation of the State to provide the necessary resources and capacity, regardless of the body that is asked to provide such information. If the authorities of the Ministry of Defence were to facilitate the use of evidence in criminal proceedings, this would greatly contribute to shedding light on cases of enforced disappearance and convicting the perpetrators, and it would also contribute significantly to national reconciliation. The country's highest authorities must request that the required information be submitted, and they must be diligent in establishing responsibility for failure to provide such information. The State is responsible for the lack of access to information in these cases.

51. The Working Group recognizes the work carried out by human rights organizations to support victims' relatives in criminal proceedings as well as the fundamental role played by the International Committee of the Red Cross, particularly in Ayacucho. Nevertheless, it should be noted that this responsibility must be assumed by the State. The Working Group therefore welcomes the recent appointment of public defenders for victims from the General Directorate of the Public Defence Service and Access to Justice within the Ministry of Justice and Human Rights. Similarly, the Working Group urgently calls on the State to ensure that those public defenders specialize solely in human rights violations, that the

number of professionals in such posts is increased, that they receive training on the cultural sensitivity needed, especially as it relates to using the relatives' language, and that they are provided with the necessary knowledge about the violence that occurred in Peru. Fully trained public defenders for victims could play a key role in eliminating the barriers that still hinder access to justice.

52. In addition to ensuring the safety of prosecuting attorneys in criminal proceedings involving enforced disappearance, it is equally necessary to ensure that witnesses are protected in such cases. While the Working Group was not informed of any specific cases of reprisals or intimidation, many people said that they were afraid to testify in proceedings. The Working Group highlights the need for all officials to be informed about the Protection and Assistance Programme for Victims and Witnesses, led by the Public Prosecution Service, and to ensure that all witnesses can testify during the investigations without being exposed to reprisals. The Working Group noted that prosecutors and witnesses were sometimes unaware of the Programme or of other programmes that could offer them protection.

53. Lastly, while there is no longer a systematic and widespread pattern of enforced disappearance in Peru, there are some recently reported cases that have come to the Working Group's attention that might constitute enforced disappearance. Such is the claim made by the relatives of Bruno Carlos Schell, an Argentine citizen who disappeared in Lima in June 2013 and whose whereabouts are unknown. Even though this is a recent case, according to the information received, the victim's relatives are facing the same problems as those faced by the relatives of persons who disappeared in the 1980s, such as the investigations being delayed or information being restricted by the authorities. It is worrying that, despite the years that have passed since the first cases of enforced disappearance in Peru, the Peruvian judicial system continues to suffer from legal and structural limitations that hinder the determination of the whereabouts or the discovery of the remains of disappeared persons.

V. Right to reparation

54. Article 19 of the Declaration imposes upon States the obligation to provide reparation to the victims and their relatives in cases of enforced disappearance, and to provide them with adequate compensation.

55. The Working Group welcomes the progress made by Peru with regard to reparations, particularly the establishment of the Comprehensive Reparations Plan, as proposed by the Truth and Reconciliation Commission. The Working Group also welcomes the fact that the Plan has been given the institutional support necessary for its implementation, with the establishment of the Central Register of Victims and the High-Level Multisectoral Committee. Similarly, it recognizes the efforts made by regional governments, such as the government of Huánuco, to encourage the establishment of regional reparations plans.

56. The Working Group has received information about the work done by the Reparations Board to register victims. According to this information, as at 31 March 2015, a total of 211,999 individual victims from 5,708 communities, and 56 organized groups of displaced persons, have been registered in the Central Register of Victims. With respect to enforced disappearance, 8,661 victims and 18,000 relatives have been identified. Also, 16,397 relatives of victims of enforced disappearance have received financial compensation totalling 55,312,289 soles; of these beneficiaries, 5,780 are from the region of Ayacucho. A total amount of 253,600,000 soles has been granted as individual financial compensation to 76,590 beneficiaries. Between 2007 and 2014, the High-Level Multisectoral Committee

implemented a budget of 506,129,000 soles. With regard to reparation in the form of education benefits for relatives of victims of enforced disappearance, 846 scholarships have been granted, of which 130 were granted to the children of victims of enforced disappearance.

57. Nevertheless, the Working Group has identified many challenges. In the first place, the Central Register of Victims was closed on 31 December 2011. In addition, the Working Group is concerned that, when granting reparation, the fact that some victims experienced multiple violations is not taken into account. In this regard, while welcoming the judgment of 10 May 2016 issued by the Fifth Specialized Constitutional Court of Lima, which recognizes the fact that victims suffered multiple violations during the internal armed conflict, the Working Group notes with concern that the judgment, which would cover 5,516 persons, has been appealed by the Ministry of Justice and Human Rights.

58. The Working Group has taken into account the views of the relatives of the victims, who, in various forums, expressed their dissatisfaction with the amounts granted as compensation and considered them to be insulting, discriminatory and an example of secondary victimization. The Working Group recognizes the high economic cost incurred by granting such compensation; however, it wishes to point out that reparation should be proportionate to the gravity of the damage caused and its effects, as stipulated in the general comment on article 19 of the Declaration, and it urges the State to give prompt attention to this matter.

59. The Working Group highlights the fact that the Comprehensive Reparations Plan recognizes other types of reparations — such as those relating to education, housing and health — and thus attaches a broader sense to the term than mere financial compensation. In this regard, it appreciates the efforts that have benefited the country's population and that constitute tangible progress towards ensuring full reparation for victims. The Working Group recognizes that the State recently allowed educational reparations to be transferred to a victim's direct descendant, taking into account the special circumstances and the psychosocial situation and age of the victims and relatives.

60. In the light of the mental and psychological effects of the political violence, which still persist, particular attention should be given to health reparations. While recognizing the State's efforts to provide adequate resources and staff through the Ministry of Health, the Working Group notes that these are still very limited and believes that urgent measures are required. In Ayacucho and Huánuco, despite pointing out the urgent need to address the issue of mental health at the individual and community levels, the Working Group observed that human and financial resources were limited for the bulk of the population and in many cases non-existent. In other contexts, mental health-care providers are not specialized in dealing with cases arising from political violence; there is a high turnover of staff and a lack of experience in the area, and often cultural background and gender are not taken into account. The coordination efforts in the area of mental health care between state, national and regional bodies and civil society organizations in Huánuco should serve as a model to be improved upon and replicated in other areas.

61. The Working Group draws attention to the lack of detailed information regarding the way in which the State implements the reparations programme from a gender and intercultural perspective. This would indicate that reparations are not carried out from a comprehensive perspective that takes into account the particular way in which women and persons belonging to indigenous peoples such as the Asháninka- and Quechua-speaking peoples were affected by the violence. This shortcoming not only makes reparations less effective but may also serve to perpetuate discrimination in the country.

62. Other forms of violence apart from rape are also not likely to be taken into account for the purposes of reparation. In cases of enforced disappearance in particular, many

women were victims of various types of sexual violence at the time their loved ones disappeared or in the course of their search for them, and they have not received adequate reparation. The Working Group reminds the State of its obligation to make reparation for all human rights violations.

VI. Right to memory

63. The Working Group emphasizes the need to create a comprehensive memory policy that takes into account the importance of officially recognizing places of remembrance, including existing ones, and that promotes an ongoing exchange with relatives and associations of relatives with regard to those places. Remembrance processes can repair the torn fabric of society and encourage reconciliation among its members, by acknowledging and reconciling their memories.

64. The Working Group welcomes the construction of the Place of Remembrance, Tolerance and Social Inclusion and its inauguration in December 2015. It also highlights the inclusion of information on the gravity of the situation of enforced disappearance during the period of violence and its impact on the victims' relatives and communities.

65. Furthermore, it urges the State to take the necessary measures, through its various bodies in the central Government and local and regional governments, to respect, preserve and promote places of remembrance throughout the country, whether they are created by the State or by civil society. The Working Group observed that the authorities have neglected these places and have not given them adequate maintenance or protection. Instead, they are being protected, subject to obvious constraints, by civil society organizations and associations of relatives. The current situation at the La Hoyada Shrine of Remembrance should be given particular attention, as in recent years it has suffered from squatting, encroachment and neglect.

66. The Working Group recognizes the importance of the "Yuyanapaq" photographic exhibition in the Ministry of Culture. This is an important initiative that should be replicated elsewhere in the country as part of comprehensive efforts to build a shared memory. The national education system, both civilian and military, should place greater emphasis on remembering what happened during the period of violence. In particular, there is a need to work with children, adolescents and young people, both at the standard basic education and higher education levels.

VII. Concluding observations

67. The Working Group appreciates the substantive information provided by government authorities and the various branches of the Government at the national, regional and local levels, the Ombudsman, civil society organizations, relatives and victims, for a better understanding of the phenomenon of enforced disappearance in Peru.

68. The Working Group found that the country and its society have been transformed in the 30 years since the Group's first visit, even though deep inequalities still persist. In particular, the State policy of carrying out systematic human rights violations, including enforced disappearance, has ceased. With great effort the country has managed to overcome the subversive violence, albeit at a high human cost. Nevertheless, deep wounds have yet to heal. It is a matter of concern that, despite the progress achieved, the effort to clarify the fate of those who disappeared has been very slow and limited, with a State structure that is insufficient given the size of the problem. As a result, not many cases of enforced disappearance have been resolved. This has left the victims' relatives in a perpetual state of uncertainty and prevented them from healing their wounds, as was conclusively confirmed

during the visit. Shedding light on these cases should be a State priority as part of the process of truth, reparation, justice, memory and reconciliation.

69. Despite the progress achieved in combating poverty, large socioeconomic disparities, discrimination, exclusion and marginalization, which were used by subversive groups as a justification for political violence and which made the impact of that violence even worse, are still present, and they are hindering the success of many of the measures taken with respect to truth, justice, reparation and memory. The Working Group saw this especially when travelling around the country's hinterland.

70. There are other specific challenges, including: the absence of an exact number for disappeared persons; the few judicial proceedings that have been completed; the light sentences handed down to perpetrators; the slow progress made in judicial proceedings; the failure to implement a national plan for searching for disappeared persons and a national map of grave sites; the limited number of disappeared persons exhumed and identified; the absence of a genetic databank; the lack of comprehensive psychosocial care for victims; and the absence of a public policy on remembrance. There is no legal framework that deals with the different aspects of prevention, investigation, penalties and reparation for victims of enforced disappearance. The recent adoption of the Act on the Search for Disappeared Persons, as well as the allocation of an adequate budget for its implementation and operation, could help to overcome many of these challenges.

71. Since 2000, some significant steps have been taken to secure truth, justice and reparation and to preserve memory in the context of the enforced disappearances committed during the period of political violence. Examples of tangible and valuable progress include: the work of the Truth and Reconciliation Commission; the exhumation, identification and return of hundreds of remains; the monetary, educational and health reparations provided to victims; the establishment of the Vice-Ministry for Human Rights and Access to Justice; the role played by the Ombudsman's Office; the subsystem of the criminal justice system devoted to human rights, which has handed down significant though few convictions; and the places of remembrance that have already been built or are under construction.

72. This progress has been achieved thanks to initiatives set in motion or carried out by victims' relatives or by civil society and some sectors of the State. In accordance with its international obligations, the State must assume this responsibility and play a leading role in ensuring that these initiatives become part of a comprehensive, consistent and continuous State policy carried out in cooperation and collaboration with the victims and their relatives. This would send a strong message condemning enforced disappearance. The armed forces should make a clear commitment to cooperate in the search for truth and justice, which means that the highest political authorities must issue clear instructions to that effect. All of this would help build the foundations of a State that will not allow these very serious human rights violations ever to be committed again on its behalf.

73. The Working Group had occasion to meet dozens of relatives. Practically all of them expressed deep frustration at the impediments to and difficulties in accessing the information they need in order to clarify the fate and whereabouts of their loved ones. In particular, they indicated that being of Quechua-speakers and using other indigenous languages, combined with their socioeconomic condition exposed them to discrimination and contempt on the part of the authorities. Because enforced disappearance has greatly affected Peruvian women, all actions relating to enforced disappearance should take into account a gender perspective. In view of the lapse of time since most of the cases of enforced disappearance began and the advanced age of many of the witnesses, relatives and perpetrators, the State should urgently and immediately prioritize the search for the truth, and in particular the determination of the fate and whereabouts of disappeared persons. While in some cases it is difficult or nearly impossible to establish the ultimate fate of disappeared persons, the State has an absolute obligation to take all necessary, reasonable

and effective measures to locate such persons or elucidate their fate. Justice and full reparation for victims should be treated with the same urgency.

74. The Working Group again expresses its solidarity with the victims of enforced disappearance and their relatives. Their constant suffering is tangible evidence that enforced disappearance is a continuing crime and a permanent violation of human rights until the fate and whereabouts of the victim are clarified.

75. The Working Group recognizes the efforts of the many human rights defenders, NGOs, lawyers and all those who work tirelessly, even in adverse circumstances, to bring the perpetrators to justice and to restore and preserve the memory of the victims of this terrible practice. It therefore urges the State and the international community to give continuous support to such efforts. The international community should support Peru in these initiatives by providing funding, training and technical assistance. The Working Group encourages the State, civil society and the victims' relatives to strengthen their collaboration so as to bring together all the existing resources and joint actions in a cooperative, concerted and coordinated manner.

76. The Working Group would welcome the opportunity to continue its constructive dialogue with the State of Peru and offers its assistance in fully implementing the Declaration.

VIII. Recommendations

A. General recommendations

77. **The Working Group recommends that the State of Peru:**

(a) **Recognize the scope of the problem of enforced disappearance in the country and act with due urgency and speed;**

(b) **Establish the total number of victims of enforced disappearance in a systematized way, working in collaboration with the International Committee of the Red Cross, civil society organizations and victims' relatives, in order to avoid the conflicting information that still exists;**

(c) **Design and implement, as a matter of urgency, public policies to deal with enforced disappearance and its effects in a holistic and comprehensive manner, with a clear and resolute respect for ethnic, linguistic, cultural and racial diversity and a clear cross-cutting gender perspective;**

(d) **Work to eradicate the conditions of discrimination, exclusion and marginalization that were exploited during the internal armed conflict and are still present in Peru today;**

(e) **Promote policies of reconciliation, to be implemented mainly through the education system.**

B. Legal and institutional framework

78. **The Working Group recommends that the State of Peru:**

(a) **Promptly implement the Act on the Search for Persons Who Disappeared during the Period of Violence from 1980 to 2000 (Bill No. 5290/2015), adopted in May 2016;**

(b) **Adopt and implement without delay Bill No. 1406/2012-CR on amending the definition of the offence of enforced disappearance set out in the Peruvian Criminal Code to bring it into line with the Declaration and other international instruments;**

(c) **Facilitate registration in the special register of persons missing on account of enforced disappearance; organize awareness-raising and registration campaigns to give greater legal security to the relatives of disappeared persons;**

(d) **Increase the powers of the Vice-Ministry for Human Rights and Access to Justice, so that it may play a more active and leading role, particularly in the search for disappeared persons and in the management of the database on cases of enforced disappearance;**

(e) **Provide greater institutional and financial support to the Ombudsman's Office to strengthen its work, and immediately appoint an Ombudsman;**

(f) **Implement a national human rights plan that includes the contributions from civil society in relation to enforced disappearance.**

C. Right to truth

79. **The Working Group recommends that the State of Peru:**

(a) **Establish a national commission for persons who disappeared during the internal armed conflict between 1980 and 2000, as recommended by the Truth and Reconciliation Commission in 2003;**

(b) **Establish an office for persons who disappeared during the internal armed conflict, to be responsible for setting up and managing a national database on cases of enforced disappearance;**

(c) **Urgently adopt a strategy focused on the search for, identification of and return of remains from a humanitarian perspective and independently of judicial proceedings;**

(d) **Provide financial and institutional support to the Ministry of Justice and Human Rights to enable it to implement the Act on Searching for Disappeared Persons without delay;**

(e) **Create a national plan for forensic anthropology investigations that includes protocols on searching for disappeared persons, so as to provide a structural framework for the process of searching for victims of enforced disappearance;**

(f) **Develop the National Registry of Burial Sites created by the Truth and Reconciliation Commission and the corresponding database;**

(g) **Offer special support and protection to forensic experts and prosecutors during their investigations, particularly in dangerous areas where activities linked to drug trafficking take place;**

(h) **Provide further human resources and budget support to the Specialized Forensic Team so that it can achieve better results and make rapid progress in the search for and identification of remains;**

(i) **Extend the Team's capacity for action to other regions of the country;**

(j) **Promote practices of mutual cooperation between all State bodies and members of Peruvian society, in the light of the very high number of disappeared persons whose fate is still unknown;**

(k) **Provide the Dr. José Macera Tito Forensic Anthropology Laboratory with the necessary scientific and human resources, making it a matter of political priority to shed light on cases of disappearance;**

(l) **Extend the use of DNA analysis, in order to prevent mistaken identifications and make it possible to identify the hundreds of bodies that were exhumed years ago but still remain unidentified;**

(m) **Speed up the excavations in Ayacucho as well as in other regions of the country where cases of enforced disappearance occurred;**

(n) **Ensure that the wishes of the disappeared person's family are respected when returning the remains and that the family members are provided with all the support they need to travel to and from their place of residence to recover the remains of their loved one;**

(o) **Facilitate access to the information held in the archives of the armed forces and the national police by ensuring that the Ministry of Defence fully complies with court injunctions, primarily with regard to any information they may be able to provide about burial sites and perpetrators.**

D. Right to justice

80. **The Working Group recommends that the State of Peru:**

(a) **Continue to restrict the jurisdiction of the National Criminal Court exclusively to offences relating to human rights violations, rather than expanding its competence to cover ordinary offences;**

(b) **Create more prosecutor's offices and courts at the national level to handle and expedite trials of cases of enforced disappearance;**

(c) **Maintain job security for judges and prosecutors so as to guarantee continuity in complex judicial proceedings and ensure the impartiality and independence of judges; provide the necessary human and financial resources so that all justice officials may carry out their work in an honest and efficient manner;**

(d) **Ensure the safety of prosecutors and judges when conducting their investigations, primarily when visiting areas where access is difficult or complicated;**

(e) **Provide training on national legislation and international standards on enforced disappearance and other crimes against humanity to members of the judiciary and the Public Prosecution Service who are involved in the investigation of cases of enforced disappearance;**

(f) **Promote the active and coordinated participation of victims' relatives and their lawyers in all judicial proceedings requiring investigations, with the aim of overcoming cultural, geographic and economic barriers and thus facilitating access to justice; ensure this participation through coordination with associations of relatives, NGOs and the International Committee of the Red Cross;**

(g) **Expedite the issuing of judgments by the judiciary in the trials of cases of enforced disappearance currently under way and promote the opening of new trials;**

(h) **Strengthen efforts by the judiciary to collect and handle evidence, since thus far the courts have mostly relied on evidence provided by civil parties;**

(i) **Attach particular attention to circumstantial evidence in cases of enforced disappearance instead of giving primacy to testimonial evidence;**

(j) **Encourage public defenders from the General Directorate of the Public Defence Service and Access to Justice to specialize in human rights violations, and train them on issues relating to the political violence in Peru and also on knowledge of indigenous languages such as Quechua and Asháninka;**

(k) **Increase the number of public defenders that exclusively defend human rights cases, especially in the areas most affected by the violence;**

(l) **Ensure greater visibility for the Protection and Assistance Programme for Victims and Witnesses, led by the Public Prosecution Service, by raising awareness of the programme among victims, witnesses and prosecutors and emphasizing its importance;**

(m) **Identify the greatest challenges in the work of the national justice administration system and overcome those challenges, striving for the effective implementation of human rights.**

E. Right to reparation

81. **The Working Group recommends that the State of Peru:**

(a) **Reopen registration in the Central Register of Victims so as to ensure that all victims of the internal armed conflict have access to appropriate reparation;**

(b) **Increase the budget allocated for reparations, so as to ensure that the latter are adequate and comprehensive;**

(c) **Promote regional reparations plans, providing the financial and human resources needed to duly implement the plans;**

(d) **Hold regular dialogues between State officials, civil society and associations of relatives regarding the reparations policy;**

(e) **Take into account the multiple violations suffered by victims when determining the type and amount of reparation to be granted;**

(f) **Immediately attend to and implement the decision of the judge of the Fifth Constitutional Court in Lima recognizing that victims suffered multiple violations during the internal armed conflict, taking into account in particular the age and personal situation of the victims' relatives;**

(g) **Increase the budget allocated to the Ministry of Health to expand and strengthen the health reparations plan, taking into account the consequences of failing to provide mental health care to victims of the armed conflict;**

(h) **Increase human resources by recruiting qualified staff to work in the area of mental health reparations, and train those staff members on cultural and gender issues and on the internal armed conflict, so that they can offer appropriate treatment to victims;**

(i) **Adopt a public reparations policy that is culturally sensitive and incorporates a gender perspective, taking into account the fact that beneficiaries belong to an indigenous people;**

(j) **Develop a reparations plan for victims of sexual violence.**

F. Right to memory

82. **The Working Group recommends that the State of Peru:**

(a) **Implement a comprehensive policy on memory at the national, regional and local levels through programmes that aim to foster reconciliation among Peruvian citizens, focusing on the younger generations who did not live through the period of violence; this policy should be created by the Ministry of Culture in coordination with other institutions, such as the Ombudsman's Office and regional and local governments;**

(b) **Promote dialogue among the parties concerned regarding the importance of places of remembrance and their meaning as a symbol of the desire for national reconciliation;**

(c) **Provide the necessary financial and institutional support to the Place of Remembrance, Tolerance and Social Inclusion to enable it to operate sustainably and offer a space in which to reflect on the political violence experienced in Peru; the Ministry of Culture should play a major role in this;**

(d) **Promote measures to protect and preserve places of remembrance, such as "The Eye that Cries" in Lima, providing them with the necessary financial and logistical support;**

(e) **Adequately preserve the La Hoyada Shrine of Remembrance in Ayacucho, which has been exposed to squatting, encroachment and neglect at least over the past five years. The Working Group acknowledges Regional Ordinance No. 008-2015-GRA/CR of 10 November 2015 declaring La Hoyada to be an area for conservation and protection and urges the Ayacucho regional government to take urgent measures to avoid irreversible damage to the area;**

(f) **Maintain constant dialogue and coordination with the relatives of the victims when designing, developing and taking care of the shrine to make it feel like a place of remembrance;**

(g) **Build new places of remembrance across the country as part of a memory policy, with the broad participation of all sectors of Peruvian society;**

(h) **Amend the curricula in schools, universities and police and military training centres to include chapters specifically devoted to the period of political violence, in order to encourage national reconciliation in Peru;**

(i) **Promote activities relating to national reconciliation at all levels of education, such as visits to places of remembrance and the "Yuyanapaq" photographic exhibition in the Ministry of Culture;**

(j) **Create photographic exhibitions on the period of political violence throughout the country, and encourage mobile displays of the "Yuyanapaq" photographic exhibition;**

(k) **Promote the work of the Documentation Centre at the Place of Remembrance, Tolerance and Social Inclusion and combine it with the document archive of the Truth and Reconciliation Commission that is being maintained by the Ombudsman's Office for purposes of academic research, and treat the information contained therein as relevant to judicial proceedings.**

G. Assistance and cooperation

83. **The Working Group encourages the State to seek the support of the Office of the United Nations High Commissioner for Human Rights to implement the recommendations contained in this report.**

84. **The Working Group invites the Government of Peru, within 90 days from the date of submission of the present report, to submit a timetable indicating the steps that will be taken to implement the recommendations of the Working Group.**